Supreme Court, U.S.
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No. 95-848

In The

Supreme Court of the United States

October Term, 1995

MARTHA SABOL WRIGHT and JOHN C. WRIGHT, JR.,

Petitioners,

vs.

METROHEALTH MEDICAL CENTER, PETROLEUM HELICOPTERS, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS METROHEALTH MEDICAL CENTER, WILLIAM FALLON, BETTY KOVACH AND CHARLENE MANCUSO

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QUESTIONS PRESENTED

1. Whether every federal court to address the issue has properly determined that narrowly drawn anti-nepotism policies survive equal protection challenges under the authority of this Court's holdings in *Zablocki v. Redhail*, 434 U.S. 374 (1978) and *Califano v. Jobst*, 434 U.S. 47 (1977)?

2. Whether a petitioner properly invokes the jurisdiction of this honorable Court to challenge the termination from employment of a helicopter pilot for failing to respond to an emergency medical call where absolutely no record evidence supports the claim that this termination was connected in any way to enforcement of a nepotism policy, where the parties have had no ability to develop any record on this issue, where a state court action challenging the termination is pending and where the United States Court of Appeal for the Sixth Circuit is yet to rule on the appeal of the federal action challenging this termination?

3. Whether petitioners can properly challenge an anti-nepotism policy on First Amendment grounds where such challenge was at no time raised before the trial court?

LIST OF PARTIES

The Petitioners are Martha Sabol Wright and John C. Wright, Jr.

The Respondents are MetroHealth Medical Center, a county-owned hospital in Cleveland, Ohio, and three (3) individuals employed by MetroHealth Medical Center, William Fallon, Betty Kovach and Charlene Mancuso. Other Respondents include Petroleum Helicopters, Inc., a private corporation, and Wayne Thompson, an individual employed by Petroleum Helicopters, Inc.

Respondents Fallon, Kovach and Mancuso were not parties to the original action that resulted in the decision of the U.S. Court of Appeals for the Sixth Circuit, which has been appealed herein (*See Wright v. MetroHealth Medical Center*, 58 F.3d 1130 (6th Cir. 1995).) They have been named as parties to a second action which remains pending in the Sixth Circuit and has been assigned Case No. 95-4260. Accordingly, Respondents respectfully suggest that Dr. Fallon, Ms. Mancuso and Ms. Kovach are not properly named as potential Respondents in this appeal.

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CONSTITUTIONAL PROVISIONS INVOLVED

Respondents agree with Petitioners statement that the Equal Protection clause of the Fourteenth Amendment is the constitutional provision involved in this matter. However, Respondents object to Petitioners' inclusion of the First Amendment as a constitutional provision involved in this matter. Petitioners never raised a First Amendment challenge to the anti-nepotism policy before the lower court. The issue was raised, for the first time, on appeal. Accordingly, the Sixth Circuit did not opine on the First Amendment argument, stating that "Plaintiffs failed to raise this issue before the District Court and thus have not preserved the issue for appeal." (*See* Appendix 1, Petitioners' Writ at p. 16a at n. 3).

COUNTER-STATEMENT OF THE CASE

Respondents, MetroHealth Medical Center, William Fallon, Betty Kovach and Charlene Mancuso (hereinafter collectively referred to as "Respondents MetroHealth" or "Respondents") rely on the Statement of Facts as set forth in decision of the Sixth Circuit in *Wright v. MetroHealth Medical Center*, 58 F.3d 1130 (6th Cir. 1995). (*See* Appendix 2, Petitioner's Writ, pp. 11a - 32a).

However, Respondents vigorously object to references of Petitioner John Wright's dismissal. Petitioners apparently premise their appeal upon the unsupported proposition that John Wright was discharged from employment pursuant to Respondents' nepotism policy. This assertion is not part of the record before this Court, and is blatantly untrue. During the pendency of the initial Sixth Circuit appeal, and before the Sixth Circuit issued the opinion upholding the propriety of the nepotism policy at issue, Petitioner John Wright was discharged by Respondent PHI, for failing and refusing to respond to an

emergency medical call in his helicopter. Although Petitioners' case is certainly more dramatic if they can allege that Mr. Wright was discharged because of his marriage to Martha Wright, this fact is blatantly untrue and nowhere developed in the record before this Court. The actual facts of record are as follows.

Respondent MetroHealth Medical Center has an anti-nepotism policy which, in pertinent part, precludes married couples from working "in close proximity". It is hard to imagine a working situation involving closer proximity than an emergency nurse and helicopter pilot working together in an emergency life flight situation. Accordingly, when MetroHealth learned of the pending marriage, Martha Wright, an at-will employee of the Hospital, was offered a transfer to any other Hospital nursing position, of her choosing. She refused, and accordingly, her husband was informed that his employer (PHI) would transfer him from his assignment at MetroHealth in order to comply with the nepotism policy.

In January of 1993, the Wrights brought suit challenging the constitutionality of the nepotism policy. The Complaint challenged the policy on equal protection grounds. A violation of First Amendment was never pleaded in the Complaint nor argued at any time during the pendency of the action in the District Court. In addition, Petitioners never moved to amend their Complaint during the lengthy period the action was pending in Federal District Court to add a claim of a violation of the First Amendment.

During the pendency of this lawsuit, the parties agreed not to transfer John or Martha Wright, but rather to arrange their schedules so that they would never be working at the same place at the same time. However, also during the pendency of this action in the District Court, MetroHealth officially informed the Petitioners (through counsel) that it remained MetroHealth's

intention to allow Martha to transfer to an entirely equivalent nursing position of her choosing at MetroHealth Medical Center to avoid problems under the nepotism policy.[1]

On April 24, 1994, the District Court granted summary judgment in MetroHealth and PHI's favor. Petitioners timely appealed from the District Court's ruling and further obtained a stay pending appeal. Respondents honored the stay and did not transfer Martha Wright. However, prior to the Sixth Circuit's July 13, 1995 affirmance of summary judgment, Respondent PHI terminated John Wright's employment for reasons entirely unrelated to the nepotism policy or any litigation challenging that policy. John Wright was terminated from employment by his employer, PHI, on April 6, 1995, for failing to respond to a "go-page" in order to attend to a critically injured patient.

Shortly after his termination, Wright brought suit against the instant Respondents, alleging various state law causes of action, including defamation, tortious interference with business relationship and violation of state public policy. In their Complaint, Respondents specifically state that they are "not challenging the nepotism policy . . . these were the basis of a prior suit". (Verified Complaint, Cuyahoga County Common Pleas Case No. 292123, Para. 15, n. 2). Respondents have answered this Complaint and vigorously deny its assertions. The parties are in the midst of discovery. Nowhere in that pending state court lawsuit do Petitioners suggest that Wright was fired on account of the nepotism policy.

On November 14, 1995, Petitioners filed another Complaint, in District Court, naming the same parties as

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1. Ms. Wright, pursuant to the Ohio Revised Code, is an unclassified civil servant employed at the will of the hospital. (*See* Ohio Revised Code §§ 339.06 and 124.11).

defendants. In this Complaint, Petitioners allege that Mr. Wright's termination was an attempt to "covertly implement the nepotism policy despite the stay [entered by the Sixth Circuit]". (Complaint in U.S. District Court Case No. 95CV2414 at ¶ 18). Attached to the Complaint was a "Suggestion of Dismissal" stating that the sufficiency of the Complaint in that action was controlled by the Sixth Circuit decision in *Wright v. MetroHealth*, 58 F.3d 1130 (6th Cir. 1995). The District Court entered the Order of Dismissal before Respondents had the opportunity to file an answer. The appeal from this entry of dismissal is now pending before the Sixth Circuit Court of Appeals.

It is based upon this second federal Complaint, dismissed upon plaintiffs' suggestion, that Petitioners represent to the Supreme Court of the United States that John Wright was fired under a nepotism policy. There is absolutely no other factual or record basis to support this demonstrably false assertion.

SUMMARY OF THE ARGUMENT

Certiorari is not warranted in this matter. The Sixth Circuit's decision is in harmony with this Court's decisions in *Zablocki v. Redhail*, 434 U.S. 374 (1978) and *Califano v. Jobst*, 434 U.S. 47 (1977). Furthermore, *every* federal court to rule on the constitutionality of nepotism policies has determined that, unlike the direct impediment to marriage involved in *Zablocki*, *supra*, reasonably drawn anti-nepotism policies place no direct legal obstacle in the path of persons desiring to get married and are therefore lawful under the analysis of *Jobst*.

Petitioners' attempts to mischaracterize the holdings of other federal decisions aside, the Fourth, Sixth, Seventh, Eighth, Ninth, Eleventh, and D.C. Circuits have all, applying the rational basis test, affirmed the validity of nepotism policies against equal protection challenges. In addition, each Circuit, and indeed each

federal court to address the issue, has adopted the reasoning of this Court set forth in the *Zablocki* and *Jobst* decisions. There is no conflict. There is no confusion. Accordingly, the petition should be denied.

REASONS FOR DENYING THE WRIT

I.

THE SIXTH CIRCUIT OPINION IS ENTIRELY CONSISTENT WITH PRIOR OPINIONS OF THIS COURT.

The relevant provisions of the nepotism policy at issue are quoted in the Court of Appeal's opinion at pages 13a - 14a. The policy provides that:

> In order to prevent conflicts which may arise in situations where members of the same immediate family are employed by the Hospital, the Hospital will not allow an individual to be employed, transferred or promoted, where as a result any of the following would exist:
>
> 3. Members of the same immediate family being in positions which are of such close proximity that they would necessarily interact with each other in the performance of their duties. . . .

* * *

> C. If, as a result of a marriage between two employees, a violation of the nepotism guidelines arises, the affected employees will be given the option of electing which spouse will be moved to another position in the Hospital. . . .

It is uncontroverted that at all relevant times, Petitioner Martha Wright was given the option of transferring to any other equivalent position in the Hospital.

Citing this Court's opinions in *Zablocki v. Redhail*, 434 U.S. 374 (1978) and *Califano v. Jobst*, 434 U.S. 47 (1977), the appellate court properly determined that this policy does not violate the fundamental right to marry and is thus not subject to a strict scrutiny review. The Sixth Circuit properly noted that "not every state action which relates in any way to the incidents or the prerequisites for marriage must be subject to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be imposed." 58 F.3d at 1134-35, citing *Zablocki*, *supra*, 434 U.S. at 386. The Sixth Circuit properly determined that, as the policy at issue is not a direct and substantial interference with the right to marry, the "rational basis" test is properly applied.

In *Califano v. Jobst*, *supra*, this Court upheld sections of the Social Security Act providing for termination of a dependent child's benefits upon marriage to an individual not entitled to benefits under the Act. As the opinion in *Califano* expressly noted, "the rule terminating benefits upon marriage was not an attempt to interfere with the individual's freedom to make a decision as important as marriage . . . there was no evidence that the law significantly discouraged, let alone made practically

impossible" any marriages. *Zablocki v. Redhail*, 434 U.S. at 387, n. 12, *citing Califano v. Jobst*, 434 U.S. at 47-48.

In sharp contrast, the governmental action at issue in *Zablocki v. Redhail* was a Wisconsin statute which provided that members of a certain class of Wisconsin residents could not marry within the state or elsewhere without first obtaining a court order granting permission. 434 U.S. at 375. Thus, this Court found that the plaintiff class in *Zablocki*, individuals with support obligations for non-custodial children, were subjected to a statute which "significantly interfere[d] with the exercise of [the right to marry]" and thus a heightened scrutiny was appropriate. 434 U.S. at 383. This Court explained that:

> [B]y reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way the incidence of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed, *See, Califano v. Jobst, ante*, p. 47, n. 12, *infra*, ... The statutory classification at issue here, however, clearly does interfere directly and substantially with the right to marry.
>
> Under the challenged statute, no Wisconsin resident in the affected class may marry in Wisconsin or elsewhere without a court order and marriages contracted in violation of the statute are both void and punishable as

> criminal offenses. . . . These persons are absolutely prevented from getting married.

434 U.S. at 386-87.

Justices Berger, Stewart, Powell, and Stevens each wrote concurring opinions in *Zablocki*, and each Justice was careful to note the limited scope of the holding invalidating the Wisconsin statute. For example, Chief Justice Berger, concurring, stated that the majority holding in *Zablocki* is not:

> in any significant way inconsistent with the Court's unanimous holding in *Califano v. Jobst* . . . Unlike the intentional and substantial interference with the right to marry effected by the Wisconsin statute at issue here, the Social Security Act provisions challenged in *Jobst* did not constitute an attempt to interfere with the individual's freedom to make a decision as important as marriage . . . and, at most, had an indirect impact on that decision.

434 U.S. at 391.

Likewise, Justice Stewart, pointed out that "a state may not only significantly interfere with decisions to enter into the marital relationship, but may in many circumstances absolutely prohibit it". 434 U.S. at 392. Justice Stewart cited, as examples, rules against minors marrying, restrictions upon health screening prior to marriage, etc. *Id.*

Justice Powell, in his concurrence, stated that "the majority's rationale sweeps too broadly in an area which traditionally has been subject to pervasive state regulations." 434 U.S. at 396. Additionally Justice Stevens concurring, reiterated that a state may

> have valid reasons for treating married and unmarried persons differently. Classifications based on marital status have been an accepted characteristic of tax legislations, selective service rules and social security regulations. As cases like *Jobst* demonstrate, such laws may significantly interfere with decisions to enter into the marital relationship ... that kind of interference, however, is not a sufficient reason for invalidating every law reflecting a legislative judgment that there are relevant differences between married persons as a class and unmarried persons as a class.
>
> A classification based on marital status is fundamentally different from a classification which determines who may lawfully enter into the marriage relationship.

434 U.S. at 403-04.[2]

Subsequent decisions of this Court further confirm the lawfulness of governmental distinctions based upon marriage which do not directly and substantially interfere with the marital relationship. For example, in *Bowen v. Gilliard*, 483 U.S. 587 (1987), this Court considered a challenge to an amendment authorizing federal aid to families with dependent children (AFDC) that required that a family's eligibility for benefits take into account the income of all parents, brothers and sisters living in the same home. The question for review in *Bowen* was whether that requirement violated the Equal Protection Clause when applied to a family wishing to receive benefits to include within

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2. Justice Renquist dissented entirely from the majority opinion, stating that he would have affirmed the validity of the Wisconsin statute.

its unit a child for whom support payments were being made by a non-custodial parent. 483 U.S. at 589-90.

Justice Stevens, writing for the Court, rejected the claim that "some form of heightened scrutiny is appropriate because the amendment interferes with the family's fundamental right to live in the type of family unit it chooses". 483 U.S. at 601. This Court determined that "close relatives are not a suspect or quasi suspect class. As a historical matter they have not been subjected to discrimination; they do not exhibit obvious, immutable or distinguishing characteristics that define them as a discrete group, and they are not a minority or politically powerless". 483 U.S. at 602. This Court further stated that the statutory classification at issue in *Bowen* did not "directly and substantially interfere with family living arrangements and thereby burden a fundamental right". 483 U.S. at 603, citing *Zablocki, supra*, 434 at 386-87. *See also Lyng v. Castillo*, 477 U.S. 635 (1986) ("Close relatives are not a suspect or quasi suspect class" and statutory definition treating parents, children and siblings who live together as a single household for food stamp eligibility, but not more distant relatives does not "directly and substantially interfere with family living arrangements.") *See also Church of Lukumi v. Hialeah*, 508 U.S. __, 124 L. Ed. 2d 472, 520 (Justice Blackman, concurring in judgment, characterizing *Zablocki v. Redhail* as "invalidating certain restrictions on marriage as grossly under inclusive with respect to their purpose").

Thus, the clear authority of this Court supports the review of MetroHealth's nepotism policy under a rational basis test and, the Sixth Circuit correctly determined that a rational basis does exist to support this policy, as has every other Circuit to review the lawfulness of such policies.[3]

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3. The Sixth Circuit found a rational basis supporting the nepotism policy to avoid potential conflicts that might arise when two closely related (Cont'd)

The cases of this Court relied upon by Petitioners — in marked contrast to the instant matter — all involve employees or citizens penalized for exercising First Amendment right. *See*, *Adler v. Board of Education*, 342 U.S. 485 (1952) (individual belonging to certain unpopular organizations disqualified from employment); *Elrod v. Burns*, 427 U.S. 347 (1976) (political patronage dismissals violated the First Amendment); *Keynishian v. Board of Regents*, 385 U.S. 589 (1967) (statutes authorizing removal of college faculty members for insidious utterances are unconstitutionally vague); *Mt. Healthy v. Doyle*, 429 U.S. 274 (1977) (case discussing non-renewal of untenured teacher contract for alleged protected First Amendment activity); *Perry v. Sindermann*, 408 U.S. 593 (1972) (non-renewal of teacher contract for public criticism of college violated the First Amendment); *Pickering v. Board of Education*, 391 U.S. 563 (1968) (dismissal for letter to the editor critical of school violated the First Amendment); *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) (political affiliation requirement for filling any vacancy held violative of First Amendment); *Torcaso v. Watkins*, 367 U.S. 488 (1961) (denial of notary commission absent declaration of belief in God violative of First Amendment). Simply stated, these cases are irrelevant to any issue raised or that could potentially be raised before this Court on appeal.

(Cont'd)

persons allow their personal lives to impinge on their professional lives and to prevent morale among other workers from deteriorating due to the unique relationship between the married co-workers. 58 F.3d at 1136. The Seventh Circuit, in *Yuhas v. Libbey-Owens Ford Co.*, 562 F.2d 496 (7th Cir. 1977) found additional justifications for such policies, including the fact that a marital relationship "often generates intense emotions which would interfere with the worker's job performance . . . [and], if an employee who works with his or her spouse became involved in a grievance with the employer or another worker, the two spouses may be expected to take the same side in the dispute. . . . These reasons are far from frivolous. They correspond to the reasons which have led a number of institutions to conclude that family members should not work in the same environment." 562 F.2d at 499.

II.

THE SIXTH CIRCUIT'S DECISION AND ANALYSIS IS CONSISTENT WITH THAT OF EVERY FEDERAL CIRCUIT TO HAVE ADDRESSED THE ISSUE.

Every Circuit to address the legality of anti-nepotism policies has applied a rational basis test and upheld the policy at issue. In addition, every federal appellate decision rendered after 1978 has utilized the *Zablocki/Jobst* analysis. *See Waters v. Gaston County*, 57 F.3d 422, 426 (4th Cir. 1995) (upholding nepotism policy under *Zablocki* analysis and holding that policy does not "interfere directly and substantially with the fundamental right to marriage"); *Parsons v. County of Del Norte*, 728 F.2d 1234 (9th Cir.), *cert. denied*, 469 U.S. 846 (1984) (upholding Sheriff Department no spouse within department rule under *Zablocki* analysis); *Parks v. City of Warner Robins*, 43 F.3d 609, 614 (11th Cir. 1995) (upholding city anti-nepotism policy under *Zablocki* as it did "not directly and substantially interfere with right to marry"); *Cutts v. Fowler*, 692 F.2d 138, 141 (D.C. Cir. 1982) (holding that the burden on the right to marry caused by anti-nepotism rule is "attenuated and indirect").

Petitioners are wrong in stating that the Eighth Circuit, in *Espinoza v. Toma*, 580 F.2d 346 (8th Cir. 1978) and the Tenth Circuit in *Morfin v. Albuquerque Public Schools*, 906 F.2d 1434 (10th Cir. 1990) use a heightened standard in addressing equal protection challenges to anti-nepotism rules. Although the Eighth Circuit in *Espinoza* discussed an intermediate scrutiny test in reviewing gender-based challenges under the Equal Protection Clause, in addressing the constitutionality of the no spouse employment policy at issue in that case, the court expressly adopted a *rational basis* test:

> We must, therefore, consider the purpose of

> [the public employer's] policy and whether the classification utilized to carry out the policy is reasonable, not arbitrary, and has a *rational* relationship to the policies sought to be advanced by its operation.

Id. at 348, *citing Keckeisen v. Independence School District*, 612, 509 F.2d 1062 (8th Cir.), *cert. denied*, 423 U.S. 833 (1975).[4]

Likewise, the Petitioners misstate the law in contending that the Tenth Circuit has adopted a reasonableness standard in assessing equal protection challenges to nepotism rules. In *Morfin v. Albuquerque Public Schools*, *supra*, no anti-nepotism policy was involved. Plaintiff brought a First Amendment freedom of association claim alleging that her contract was not renewed because of her association with her husband. 906 F.2d at 1436. *Morfin*, like the Sixth Circuit opinion in *Littlejohn v. Rose*, 768 F.2d 765 (6th Cir. 1985), *cert. denied*, 475 U.S. 1045 (1986) are classic freedom of association cases involving punitive action against employees based upon bias and ill will directed toward their spouses. Neither of these cases involve nepotism policies in any way, shape or form. Neither of these cases implicate the analysis set forth by this Court in *Zablocki* and neither of these cases are relevant to the instant appeal.

The other cases alleged by Petitioners to evidence inconsistency in the proper analysis for reviewing nepotism policies are grossly misrepresented in Petitioners' Brief. *Zavala v. City and County of Denver*, 759 P.2d 664 (Colo. 1988) simply did not involve review of a nepotism policy. In *Sioux City Police Officers' Association v. City of Sioux City*, 495 N.W. 2d 687 (Iowa 1993), the state court *did* use a rational basis test to uphold a

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4. In *Keckeisen*, *supra*, the Eighth Circuit upheld a no spouse rule in the context of school administrators and teachers.

nepotism policy. Likewise, in *Winrick v. City of Warren*, 299 N.W. 2d 27, 99 Mich. App. 770 (1980), the state court upheld a nepotism policy which included a blanket prohibition of working in the same department.

Bretz v. City of Centerline, 276 N.W. 2d 617 (Mich. Ct. App. 1979) was a First Amendment overbreadth analysis, irrelevant to the instant appeal. *Cybyske v. Independent School District No. 196*, 347 N.W. 2d 256 (Minn.), *cert. denied*, 469 U.S. 933 (1984) was a First Amendment analysis which did *not* involve a nepotism policy. Finally, in *Hamilton v. Board of Trustees of Oconee County*, 319 S.E. 2d 717 (S.C. App. 1984), the state court *upheld* a nepotism policy on the basis of this Court's analysis in *Zablocki*.

Indeed, the only decision which struck down an anti-nepotism policy was a pre-*Zablocki* and *Jobst* opinion of the Nebraska Supreme Court, *Voichahoske v. City of Grand Island*, 231 N.W. 2d 124 (1975). A single decision of the Nebraska Supreme Court, standing alone, hardly provides the basis for the exercise of Supreme Court jurisdiction, especially given the unanimity among all courts in upholding policies such as the instant one and in the analysis employed to reach that end.

III.

THIS CASE CLEARLY DOES NOT PRESENT AN IMPORTANT CONSTITUTIONAL ISSUE WHICH SHOULD BE RESOLVED BY THIS COURT.

The only parties professing any confusion regarding the proper analysis of nepotism policies like the one herein at issue are the Petitioners. This Court in *Califano v. Jobst* and *Zablocki v. Redhail* clearly established the proper analysis for equal protection review of governmental distinctions based upon

marital status. The Fourth, Sixth, Seventh, Eighth, Ninth, Eleventh, and D.C. Circuits, and indeed *every federal court* to review such policies have applied the *Zablocki* and *Jobst* analysis and have found that such policies are to be reviewed under the rational basis test. Clarification is simply not necessary or needed from this Court. In addition, this is a case uniquely unsuited for High Court review. Petitioners attempt to characterize this as an action where an employee was terminated under a nepotism policy. However, this is clearly not the case before this Court. Indeed, the federal appeal on the termination (such as it is) is still pending in the Sixth Circuit. A parallel state action, challenging Mr. Wright's employment termination, is currently pending. Under these facts, it would be uniquely inappropriate for this Court to assert jurisdiction, particularly where there is such unanimity as to the proper analysis and result of cases challenging nepotism policies.

CONCLUSION

The decision of the Sixth Circuit below involved well-settled principles of law that are not in conflict with, nor does it represent a departure from, the usual course of judicial proceedings. Accordingly, Respondents MetroHealth Medical Center, William Fallon, Betty Kovach and Charlene Mancuso, request that the Petition be denied.

Respectfully submitted,

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